

## **Summary of SB 107 (Budget and Fiscal Review) Chapter 325, Statutes of 2015**

### **Important Dates**

- *November 1, 2015*: Deadline for Successor Agency (SA) for a Redevelopment Agency (RDA) that was not allocated property tax prior to February 1, 2012 to submit request to formally dissolve SA.<sup>1</sup>
- *December 31, 2015*: Deadline for successor agency to make true-up payment or amount owing pursuant to DDR or never receive Finding of Completion.<sup>2</sup>
- *February 1, 2016*: Deadline to submit first annual Recognized Obligation Payment Schedule (ROPS) for July 1, 2016 – June 30, 2017<sup>3</sup>
- *April 15, 2016*: Deadline for the Department of Finance (DOF) to make its determinations on ROPS for July 1, 2016-June 30, 2017<sup>4</sup>
- *July 1, 2016*: Deadline for successor agency with Long Range Property Management Plan (LRPMP) approved prior to January 1, 2016 to amend Plan to allow for retention of parking facilities.<sup>5</sup>
- *July 1, 2018*: Single county-wide oversight board takes effect. Five oversight boards established in those counties (Los Angeles) in which more than 40 oversight boards were created.<sup>6</sup>

### **Most Significant Provisions**

- Repayment of prior city RDA loans [See page 2, #1]
- Use of 2011 bond proceeds [See page 4, #6]
- Re-entered city-RDA agreements under AB X1 26 [See page 3, #3]
- Public parking facilities [See page 8, LRMP #1]
- Agreements between RDA and city to repay federal (HUD/CDBG) grants or loans are enforceable obligations [See page 3, #2]
- Limitation on future legal expenses [See page 9, Legal #2]
- Special Provisions [See page 10]

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<sup>1</sup> Section 34187(c) [All references are to Health & Safety Code unless otherwise noted]

<sup>2</sup> Section 34179.7 (a)

<sup>3</sup> Section 34177(o)

<sup>4</sup> Section 34177(o)

<sup>5</sup> Section 34191.3 (b)

<sup>6</sup> Section 34179(j); Section 34179(q).

## Funding

1. Repayment of Previous City-RDA Loans: If a successor agency has received a finding of completion, an oversight board may revitalize a loan agreement between the former RDA and the city. SB 107 defines “loan agreement” as follows:

- Loans for money under which the city transferred *cash* to the former RDA for use for a lawful purpose and where the former RDA was obligated to repay the money pursuant to a required repayment schedule;<sup>7</sup>
- Agreement under which city transferred *real property* to the former RDA for use for a lawful purpose and RDA was obligated to pay the city for the real property interest; or
- Agreement under which city contracted with third party on behalf of the former redevelopment agency for the development of *infrastructure* in connection with the redevelopment project as identified in a redevelopment project plan and RDA was obligated to reimburse the city for the payments made to the third party.<sup>8</sup> The language of SB 107 can be read to limit the total amount of funds repaid for this type of loan to \$5,000,000. However, DOF staff testified to the Senate Budget Committee that the \$5 million cap was on a “per loan” basis. Senator Leno submitted a letter to the Senate Journal explaining that the Legislature intended to allow a maximum payment of \$5,000,000 on each loan.<sup>9</sup>

*Interest rate*: On the remaining principal amount of the loan that was previously unpaid after the original effective date shall be recalculated from the date of origination of the loan as approved by the redevelopment agency on a quarterly

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<sup>7</sup> Concerns have been raised by city attorneys over how DOF may interpret the requirement to repay pursuant to a “repayment schedule.” While in its tentative ruling in *Watsonville* the Court referred to a “repayment schedule,” it later used the more flexible phrase “with repayment terms” in its final ruling.

<sup>8</sup> It is hoped that DOF will interpret these loan-repayment provisions consistent with testimony presented to the Senate Budget Committee and legislative intent reflected in the Letter to the Journal.

<sup>9</sup> Section 34191.4(b)(2).

- Here is a link to the hearing where the DOF staff testifies to the Senate Budget Committee: <http://senate.ca.gov/media/senate-budget-and-fiscal-review-committee-30?type=video>.
- The Letter to the Journal is intended to support the Legislature’s intent, based upon what DOF’s staff stated in testimony to the committee. <http://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/Hot-Issues/Redevelopment-Dissolution/2015-RDA-Budget-Proposal/SB-107-Letter-to-Journal> Letters to the Journal typically will only be considered by a court under limited circumstances if the language of the statute is found to be ambiguous.

basis at a simple interest rate of 3%. Moneys repaid shall be applied first to principal and second to interest.<sup>10</sup>

*Previously approved loans:* The definition of “loan agreement” is made retroactive to June 28, 2011. However, the new definition shall not result in the denial of a loan that has been previously approved by DOF prior to the effective date of SB 107. DOF staff affirmed this commitment in testimony to the Senate Budget Committee and this intent is also captured in the Letter to the Journal.<sup>11</sup>

SB 107 also provides that the definition of “loan agreement” and the limitation on the interest rate does not impact the judgments entered in the *City of Watsonville* and *City of Glendale* decisions.<sup>12</sup>

2. Three New Enforceable Obligations Recognized: AB X1 26 provided that written agreements between the city and its RDA were not enforceable obligations unless the agreement was entered into at the time of issuance, but in no event later than 12/31/2010 for indebtedness obligations and solely for the purpose of securing or repaying those obligations.

SB 107 creates 3 new exceptions:

- Agreement entered into at the time of issuance, but in no event later than June 27, 2011 of indebtedness obligations solely for the refunding or refinancing of other obligations that existed prior to January 1, 2011 and solely for the purpose of securing or repaying the refunded or refinance indebtedness.
- Agreement prior to June 28, 2011 relating to state highway infrastructure improvements to which the RDA committed funds pursuant to Section 33445
- Agreement to repay or fulfill an outstanding loan or development obligation imposed by a federal grant or loan (including HUD) to city or county or city and county which subsequently loaned or provided those funds to the former RDA.<sup>13</sup>

3. Re-entered Agreements: AB X1 26 allowed an oversight board to approve the request of a successor agency to re-enter into an agreement with the city that was made invalid by Section 34171(d). SB 107 provides that an oversight board may not approve such a request on or after June 27, 2012. This means that re-entered agreements approved by the oversight board before June 27, 2012 are valid and those agreements approved thereafter are not.<sup>14</sup>

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<sup>10</sup> Section 34191.4(b)(3).

<sup>11</sup> Section 34191.4(d)

<sup>12</sup> Senator Leno’s Letter to the Journal also addresses this issue.

<sup>13</sup> Section 34171(d)(2)

<sup>14</sup> Section 34178.

4. Plan Time Limits: Former CRA time limits affecting the number of tax dollars and other statutory limitations on redevelopment plans do not apply for purposes of payment of enforceable obligations and revitalized loans.<sup>15</sup>

5. 2010 Bonds: Expenditure of excess bond proceeds in a manner consistent with the original bond covenants only requires approval of oversight board. If the excess proceeds cannot be spent, then the proceeds shall be used at the earliest date permissible under the applicable bond covenants to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.<sup>16</sup>

6. 2011 Housing Bonds: Existing law allows a housing successor to use excess indebtedness obligations that remain after the satisfaction of enforceable obligations approved on a ROPS. The existing law requires the proceeds to be derived from indebtedness issued for the purposes of affordable housing prior to January 1, 2011. SB 107 changes the date to June 28, 2011.<sup>17</sup>

7. Other 2011 Bonds: Excess bond proceeds may be used subject to the following restrictions:

- No more than 5% of the proceeds may be expended unless SA has an approved Last and Final ROPS (see page 6 of this memo).
- If SA has an approved Last and Final ROPS, then SA can access a maximum of the following percentages of bond proceeds depending upon date of issuance:
  - Bonds issued 1/1/2011 to 1/31/2011: 45%
  - Bonds issued 2/1/2011 to 2/28/2011: 40%
  - Bonds issued 3/1/2011 to 3/31/2011: 35%
  - Bonds issued 4/1/2011 to 4/30/2011: 30%
  - Bonds issued 5/1/2011 to 5/31/2011: 25%
- Remaining bond proceeds that cannot be spent shall be used at the earliest date permissible to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.
- Expenditure of bond proceeds shall only require oversight board approval.
- If SA provides the OB and the DOF with documentation that approves that bonds were approved by the former RDA prior to January 31, 2011 but the issuance was delayed by the actions of a third-party metropolitan regional transportation authority beyond January 31, 2011, then SA may spend 45% of excess proceeds.

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<sup>15</sup> Section 34189.

<sup>16</sup> Section 34191.4(c).

<sup>17</sup> Section 34176(g).

- 45% of the excess proceeds of bonds issued after 12/31/2010 to refund or refinance tax-exempt bonds issued on or before 12/31/2010 and which are in excess of the amount needed to refund or refinance may be spent.<sup>18</sup>

8. Reimbursement for Parking Lots: A city, county, city and county, or parking district shall not be required to reimburse or pay a successor agency for any funds spent on or before December 31, 2010 by a former redevelopment agency to design and construct a parking facility.<sup>19</sup>

9. Limits on Loans from City to Successor Agency: Existing law allowed a city to loan or grant funds to its successor agency for administrative costs or enforceable obligations or project-related expenses.

SB 107 limits such loans as follows:

- Only available to the extent that the SA receives an insufficient distribution from the RPTTF or other approved sources of funding are insufficient.
- Interest payable shall be calculated on a fixed annual simple basis and applied to the outstanding principal amount until full paid at a rate not to exceed the most recently published interest rate earned by funds deposited into LAIF during the previous fiscal quarter. Repayment applied first to principal.
- Loans repayable to the extent that property tax revenue allocated to SA is available after fulfilling other enforceable obligations on ROPS.<sup>20</sup>

10. New Limitations on Enforceable Obligations for “Winding Down:” AB 1484 allowed a successor agency to create new enforceable obligations to conduct the work of winding down the redevelopment agency. SB 107 provides that “winding down” does not include planning, design, redesign, development, demolition, alteration, construction, construction financing, site remediation, site development or improvement, land clearance, seismic retrofits and other similar work. Section is retroactive to 06/27/2012.<sup>21</sup>

11. Administrative Cost Allowance: Possible Reduction: The administrative cost allowance for the 2015-16 fiscal year is 3% of the property tax allocated to the Redevelopment Obligation Retirement Fund with a minimum amount of \$250,000.

Commencing with July 1, 2016, the administrative cost allowance is up to 3% of the *actual* property tax distributed to the successor agency in the preceding fiscal year reduced by the successor agency’s administrative cost allowance and revitalized

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<sup>18</sup> Section 34191.4(c)(2).

<sup>19</sup> Section 34191.3(c)(ii).

<sup>20</sup> Section 34173(h) – not retroactive

<sup>21</sup> Section 34177.3(b).

loan repayments to the city, county, or city and county. However, if 3% of the *actual* property tax distributed in the preceding fiscal year exceeds *50% of the total* Redevelopment Property Tax Trust Fund distributed to pay enforceable obligations in the preceding fiscal year reduced by administrative costs and revitalized loan repayments, the latter amount is the administrative cost allowance. The minimum amount of \$250,000 remains.<sup>22</sup>

12. Audits: Existing law allows the State Controller to audit the differences between actual payments and past estimated obligations on the ROPS. SB 107 requires the State Controller to complete any such audit no later than June 30, 2016 and leaves the auditing function to the county auditor-controller. The State Controller may conduct an audit pursuant to the authority of the general laws.<sup>23</sup>

### **Recognized Obligation Payment Schedules (ROPS)**

1. Annual ROPS begins 2016-17 FY: Submit annual ROPS beginning on February 1, 2016 and each February 1 thereafter. DOF makes determinations no later than April 15, 2016 and each April 15 thereafter. Meet and confer is available with the exception of items that are the subject of litigation disputing DOF's previous or related determination.<sup>24</sup>

2. Limitation on Meet and Confer: Meet and confer no longer available for ROPS items that are the subject of litigation disputing DOF's previous or related determination.<sup>25</sup>

3. New authority for auditor-controller: County auditor-controller may require any documents associated with enforceable obligations to be provided (authority previously granted to DOF and State Controller).<sup>26</sup>

4. Petition for final and conclusive determination: DOF must respond within 100 days to petition for final and conclusive determination on an enforceable obligation. Enforceable obligation that provides for an irrevocable commitment of revenue and where allocation of such revenues is expected to occur over time is eligible for "final and conclusive" determination.<sup>27</sup>

5. Last and Final ROPS: Beginning January 1, 2016, SA may submit a Last and Final ROPS for approval by OB and DOF if (1) remaining debt is limited to administrative costs and payments pursuant to enforceable obligations with defined payment schedules; (2) all remaining obligations have been previously listed on ROPS; (3) SA

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<sup>22</sup> Section 34171(b)(3) and (4).

<sup>23</sup> Section 34186.

<sup>24</sup> Section 34177(o)

<sup>25</sup> Section 34177(m).

<sup>26</sup> Section 34177(a)(2).

<sup>27</sup> Section 34177.5(i).



is not a party to outstanding or unresolved litigation (with exception for litigation involving LAUSD and County of Los Angeles; and LAUSD and City of Los Angeles). Details of the contents of the Last and Final ROPS can be found at Section 34191.6.

On effective date of the approved Last and Final ROPS, SA no longer prepares and transmits ROPS; OB resolutions no longer transmitted to DOF except for resolutions necessary for refunding bonds (Section 34177.5); long range property management plans; amendments to Last and Final ROPS and final OB resolutions.

If an SA has received approval of a Last and Final ROPS, and if the SA receives insufficient funds to pay for the enforceable obligations approved in the Last and Final ROPS, the city may loan or grant funds to the SA to pay those enforceable obligations. Such loans may not include an interest component. At the request of the DOF, the county treasurer may loan funds from the county treasury to the RPTTF of the SA for the purpose of paying enforceable obligations.

County-auditor reviews Last and Final ROPS and provides any objections to the inclusion of any items or amounts to DOF. Auditor-controller directed to allocate moneys in RPTTF in a different order.<sup>28</sup>

SA may amend or modify existing contracts, agreements or other arrangements identified on Last and Final ROPS provided the outstanding payments are not accelerated or increased in any way; an amendment to extend terms shall not include an extension beyond the last scheduled payment for the enforceable obligations listed on Last and Final ROPS.<sup>29</sup>

6. Commencing October 1, 2018 and annually thereafter, the differences between actual payments and past estimated obligations on the ROPS shall be submitted by SA to the county auditor-controller.<sup>30</sup>

### **Oversight Boards**

1. County-wide OB commencement date changed to July 1, 2018. Staffed by county auditor-controller, by another county entity, or by a city selected by the county auditor-controller. Staffing costs may be recovered directly from RPTTF for all costs incurred. If only one successor agency within county, then successor agency may staff OB.<sup>31</sup>

2. In each county in which there were more than 40 oversight boards, there will be 5 OB (organized by supervisorial district) beginning July 1, 2018.<sup>32</sup>

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<sup>28</sup> Section 34191.6(d)(2)

<sup>29</sup> Section 34191.6(e)

<sup>30</sup> Section 34186(c).

<sup>31</sup> Section 34179(j).

<sup>32</sup> Section 34179(q).

3. DOF can continue to review all OB actions. However, OB not required to send the following for DOF approval: meeting minutes and agendas; administrative budgets; changes in OB members; transfers of governmental property pursuant to LRPMP; transfers of property to be retained by city for future development pursuant to an approved LRPMP.<sup>33</sup>
4. May appoint alternative representatives to OB.<sup>34</sup>

### **Long Range Property Management Plans**

1. If DOF approved LRPMP prior to January 1, 2016, then SA may amend LRPMP once solely to allow for retention of real properties that constitute “parking facilities and lots dedicated solely to public parking.” The amendment must occur prior to July 1, 2016. “Parking facilities and lots dedicated solely to public parking” do not include properties that generate “revenues in excess of reasonable maintenance costs of properties.”<sup>35</sup>
2. DOF or OB may require approval of a compensation agreement with taxing entities prior to any transfer of property provided that compensation agreement may be developed and executed subsequent to the approval process of LRPMP.<sup>36</sup>
3. Actions to implement the disposition of property pursuant to an approved long-range property management plan shall not require review by DOF [may conflict with Section 34179(h) which continues to require OB to submit resolutions regarding sale of property to third parties to DOF].<sup>37</sup>
4. If former RDA does not have properties, then SA shall prepare LRPMP certifying that SA does not have real properties. Document shall be submitted no later than 6 months after receipt of Finding of Completion.

### **Housing Successors**

If the housing successor is not a city or county, then it is required to provide certain information on its Internet Web site for the previous fiscal year: The amount the city, county or city and county received in revitalized loan payments pursuant to Section 34191.4(b)(3).<sup>38</sup>

### **Dissolution of Successor Agencies**

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<sup>33</sup> Section 34179(h).

<sup>34</sup> Section 34179(a)(11).

<sup>35</sup> Section 34191.3 (b)

<sup>36</sup> Section 34191.5(c)(A)(iii)

<sup>37</sup> Section 34191.5(f)

<sup>38</sup> Section 34176.1 (f) (1)



1. When all enforceable obligations have been retired or paid off, all real property has been disposed of, and all outstanding litigation has been resolved, an SA shall within 30 days of meeting this criteria, submit to OB a request to formally dissolve. Request requires OB and DOF approval.<sup>39</sup>
2. If CRA not allocated property tax prior to February 1, 2012, SA shall, no later than 11/1/15 submit a request to formally dissolve the agency.
3. With DOF approval of dissolution, then SA, within 100 days, must dispose of all remaining assets; any proceeds transferred to county auditor-controller.<sup>40</sup>
4. When all enforceable obligations have been retired or paid off, all statutory and contractual (prior to January 1, 1994) pass-through payment obligations shall terminate.<sup>41</sup>
5. When SA dissolved, if CFD was formed by RDA, then the legislative body of city or county becomes legislative body of CFD.<sup>42</sup>

## **Legal**

1. The Administrative Procedures Act does not apply to any action of the DOF taken after June 28, 2011 to implement the AB X1 26 and AB 1484.<sup>43</sup>
2. The administrative cost allowance is the sole funding source for a successor agency's legal expenses. A city may provide funds for legal expenses. Repayment to the city is allowed as an enforceable obligation for those causes of action in which the successor agency prevails. Otherwise, city funding becomes grant to SA.<sup>44</sup>

## **Enforcement**

1. True-up payments and DDR payments: If SA fails by 12/31/2015 to pay the true-up payments or the amounts determined by the DDR, the SA shall never receive a finding of completion. An SA may enter into an installment agreement to make the payments while seeking a judicial determination of their validity. If judicial determination reduces or eliminates the amounts, then an enforceable obligation for

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<sup>39</sup> Section 34187(b).

<sup>40</sup> Section 34187(c).

<sup>41</sup> Section 34187(h).

<sup>42</sup> Section 34187(i).

<sup>43</sup> Section 34170.1.

<sup>44</sup> Section 34171(b)(5); 34171(d)(1)(F)(ii).

reimbursement of excess amounts shall be created. Penalties imposed for failing to make installment payments.<sup>45</sup>

2. A city or county or city and county must return to the SA all assets and cash transferred to the city and ordered to be returned to the SA by the State Controller or ordered returned through the DDR process.<sup>46</sup> Any amounts ordered returned that were repayments (to the city) for an advance of funds for RDA's debt service or pass-through payments may be placed on a ROPS by the SA for payment as an enforceable obligation under certain conditions.<sup>47</sup>

### **Special Provisions**

1. San Francisco Housing: Approves the issuance of bonds for certain housing and capital infrastructure in the City and County of San Francisco.<sup>48</sup>
2. Pension Overrides and State Water Project: Allocates property tax override for pension programs or in support of capital projects and programs related to the State Water Project.<sup>49</sup>
3. San Benito County: Makes certain adjustments to the allocation of property tax revenues in the County of San Benito.<sup>50</sup>
4. Santa Clara County Cities: Makes certain adjustments to the allocation of property tax revenues in Santa Clara County.<sup>51</sup>
5. Recently Incorporated Cities: Appropriates \$23,750,000 from the General Fund to the Department of Forestry and Fire Protection contingent upon the County of Riverside agreeing to forgive amounts owed to it by cities of Jurupa Valley, Menifee, Wildomar and Eastvale.<sup>52</sup>

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<sup>45</sup> Section 34179.7

<sup>46</sup> Section 34179.9(b)

<sup>47</sup> Section 34179.9(b)(2).

<sup>48</sup> Section 34177.7 and Section 27 of SB 107

<sup>49</sup> Revenue & Taxation Code 96.11

<sup>50</sup> Revenue & Taxation Code 96.24

<sup>51</sup> Revenue & Taxation Code 98

<sup>52</sup> Section 28 of SB 107.